

1 **LEW BRANDON, JR., ESQ.**
2 Nevada Bar No. 5880
3 **JUSTIN SMERBER, ESQ.**
4 Nevada Bar No. 10761
5 **BRANDON | SMERBER LAW FIRM**
6 139 East Warm Springs Road
7 Las Vegas, Nevada 89119
8 Office (702) 380-0007/Fax (702) 380-2964
9 l.brandon@bsnv.law
10 j.smerber@bsnv.law
11 *Attorneys for Defendant,*
12 *THE VONS COMPANIES, INC.*

8
9 **UNITED STATES DISTRICT COURT**
10 **DISTRICT OF NEVADA**

11 SAMMANTHA NIEMEIER as Special
12 Administrator of the Estate of JEFFREY
13 CARTER,

14 Plaintiff,

15 vs.
16 THE VONS COMPANIES, INC., a
17 corporation; and DOES and DOE
18 EMPLOYEES I through X, inclusive; and
19 ROE ENTITIES I through X, inclusive,
20 Defendants.

10 CASE NO.:

11 **DEFENDANT THE VONS COMPANIES,**
12 **INC.'S NOTICE OF REMOVAL OF**
13 **ACTION TO UNITED STATES DISTRICT**
14 **COURT UNDER 28 USC §1441(a)**

21 Defendant THE VONS COMPANIES, INC., by its undersigned attorneys LEW BRANDON,
22 JR., ESQ., and JUSTIN SMERBER, ESQ., of BRANDON | SMERBER LAW FIRM, hereby
23 removes the above-captioned case to the United States District Court, Clark County, Nevada,
24 where the action is now pending, pursuant to 28 USC § 1441(a) and states as follows:
25 ///
26 ///
27
28

1 1. The above-entitled action was commenced in the Eighth Judicial District Court, Clark
2 County, State of Nevada on February 11, 2022, bearing Case No. A-22-848220-C. The action is
3 now pending in the Eighth Judicial District Court, Clark County, State of Nevada.

4 2. Plaintiff SAMMANTHA NIEMEIER as Special Administrator of the Estate of
5 JEFFREY CARTER (“Plaintiff”) filed the initial complaint on or about February 11, 2022,
6 claiming damages in excess of fifteen thousand dollars (\$15,000.00). Plaintiff’s Complaint fails
7 to state that this case is one which is or has become removable. *See Harris v. Bankers Life & Cas.*
8 *Co.*, 425 F.3d 689 (9th Cir. 2005).

9 3. Plaintiff served the Complaint upon Defendant THE VONS COMPANIES, INC. on
10 March 2, 2022.

11 4. Defendant filed its Answer to the Complaint on March 21, 2022.

12 5. On April 6, 2022, Plaintiff served the Petition for Exemption from Arbitration upon
13 Defendant, wherein Plaintiff alleges that Defendant’s negligence caused (a) twenty-one thousand
14 three hundred and fifty-eight dollars and sixty-three cents (\$21,358.63) in economic damages; (b)
15 Plaintiff Jeffrey Carter’s death; and (c) “combined economic and noneconomic damages [n excess
16 of] \$50,000.”

17 6. Pursuant to Fed. R. Civ. P. 6(a), the last day of the thirty (30) day period under 28 USC
18 §1446(b) is May 6, 2022. 28 USC §1446(b); *Harris*, 425 F.3d.

19 7. This Notice of Removal was filed timely as it was filed within thirty (30) days of service
20 of the Petition for Exemption from Arbitration upon Defendant on April 6, 2022, which was the
21 first motion, order, or other paper from which it could first be ascertained that this case is one
22 which is or has become removable. *Id.*

23 8. This action concerns an allegation that the Defendant negligently maintained the
24 premises and that Defendant “failed to properly ensure the safe movement of carts and trolleys,”
25 and/or negligently hired, trained, supervised, and retained individuals responsible for the
26 maintenance of the premises, thereby causing Plaintiff injury.

27 ///

28

1 9. In the Complaint, Plaintiff Jeffrey Carter, now deceased, "was a resident of Clark County,
2 Nevada." Based upon Plaintiff's allegations, Defendant is informed and believes that Plaintiff
3 was at all times relevant a citizen of the State of Nevada.

4 10. At the commencement of this action and at all times herein, Defendant was, and now is,
5 a corporation duly organized and existing under the laws of the State of Michigan, with its
6 principal place of business is located in the State of Idaho. *See Exhibit 1.*

7 11. Corporations are citizens of any state in which they are incorporated or have their
8 principal place of business. *Id.*; 28 USC §1332(c)(1).

9 12. Since Defendant is incorporated State of Michigan and maintains its principal place of
10 business in Idaho, for diversity purposes, it is a citizen of Michigan and Idaho.

11 13. At the time of commencement of this action Defendant was a citizen of Michigan and
12 Idaho, and Plaintiff was a resident of Nevada, such that complete diversity of citizenship exists
13 between Plaintiff and Defendant. *See 28 USC §1332.*

14 14. Upon information and belief, Plaintiff's damages amount to twenty-one thousand three
15 hundred and fifty-eight dollars and sixty-three cents (\$21,358.63) in economic damages, plus
16 damages that are allegedly related to Plaintiff Jeffrey Carter's death, and any additional economic,
17 noneconomic, and punitive damages. As a result, the amount in controversy exceeds seventy-five
18 thousand dollars (\$75,000.00).

19 15. The United States District Court for the District of Nevada has original jurisdiction
20 pursuant to 28 USC §1332 in that the parties are citizens of different states and the amount in
21 controversy exceeds the sum or value of seventy-five thousand dollars (\$75,000.00), exclusive of
22 interests and costs.

23 16. Accordingly, Plaintiff's Complaint is removable pursuant to 28 USC §1441, which
24 provides that a defendant may remove a case over which the federal court has original jurisdiction.

25 17. A complete copy of all process and pleadings served upon Defendant is attached hereto
26 as **Exhibit 2.**

27 ///

28 ///

CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I hereby certify that on April 21st, 2022, I served a true and correct copy of the foregoing **DEFENDANT THE VONS COMPANIES, INC.'S NOTICE OF REMOVAL OF ACTION TO UNITED STATES DISTRICT COURT UNDER 28 USC §1441(a)** through the Court's electronic filing and service systems to all parties on the current service list.

**STEVEN K. PARKE, ESQ.
THE LAW FIRM OF PARKE ESQUIRE
4455 S Jones Blvd., Suite 1
Las Vegas, Nevada 89103**

**MICHAEL T. HUA, ESQ.
MICHAEL T. HUA LAW LLC
5440 W. Sahara Ave., #106
Las Vegas, NV 89146
*Attorneys for Plaintiff***

/s/ Angelina M. Martinez
An Employee of BRANDON | SMERBER LAW FIRM

BRANDON | SMERBER
LAW FIRM